Supreme Court, U.S.
FILED
JAN 25 2007
OFFICE OF THE CLERK

No. 06-825

In The
Supreme Court of the United States

STARLETTA LUQUISE BANKS,

Petitioner,

v.

GRANHOLM, ET AL.

Respondents,

On Petition for Writ of Certiorari
To The United States Court of Appeals
For The Sixth Circuit

REPLY TO BRIEF IN OPPOSITION

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REPLY

Petitioner Starletta L. Banks strongly objects to Respondents AnnaMaria Church, Vincent Palusci and Thomas Slovis' Brief in Opposition to Petition For Writ of Certiorari because the aforementioned Respondents are misleading the Court. The Questions Presented in Petitioner's Writ of Certiorari were raised and argued in her pleadings in the courts below. Petitioner is within the law to ask this Honorable Court to consider the Questions Presented in her Petition for Writ of Certiorari. The Respondents did not challenge or object to the issues raised in the courts below thus, they should not be allowed to challenge the issues and object in this Court. The only argument raised by the aforementioned Respondents, including the State Respondents, who signed a waiver to the Petition for Writ of Certiorari, was that Petitioner's 42 U.S.C. § 1983 claims were barred by the statute of limitation set forth in Mich. Comp. Laws Ann. § 600.5805(1) and (10).

Secondly, Petitioner strongly objects to Respondents AnnaMaria Church and Vincent Palusci because the two Respondents filed untimely briefs, while on appeal in the Sixth Circuit. The two aforementioned Respondents' due date to file a brief in the Sixth Circuit was December 13, 2005. Petitioner filed a motion in the Sixth Circuit on December 21, 2005 pursuant to Fed. R. App. P. 31 because she had not yet received a brief from AnnaMaria Church and Vincent Palusci. App. _. pursuant to Fed. R. App. P. 31, Serving and Filing Briefs which states the following:

> (c) Consequence of Failure to File. An Appellee who fails to file a brief will not be heard at oral argument, unless the court grants permission.

In addition, Petitioner filed a timely (reply) motion on January 21, 2006 arguing that the two aforementioned Respondents had violated 6 Cir. Rule 26 because they did not file a motion requesting an extension of time to file their briefs. App. ___. The two Respondents simply rode the coattail of the attorney general's telephone request for an extension of time to file their brief. App. ___.

Pursuant to 6 Cir. Rule 26 COMPUTATION AND EXTENSION OF TIME which states the following:

> (a) How Sought. Extensions of time must be sought by written motion, not by stipulation of counsel or telephone request. The fact that the opposing party does not oppose the request for extension or that the opposing party previously has received an extension is not dispositive.
>
> (b) Extension of Time to File Brief. This Court does not favor applications for extensions of time for the filing of briefs.

Petitioner requested in the aforementioned motions filed in the Sixth Circuit that any argument submitted by the Respondents AnnaMaria Church and Vincent Palusci should not be considered thus, oral argument should be denied and a judgment by default was again requested. It is for these reasons Petitioner respectfully requests that any argument and objection submitted by AnnaMaria Church and Vincent Palusci in opposition in this Honorable Court, should not be considered.

Numeral 1 of Petitioner's Questions Presented in the Petition for Writ of Certiorari is an issue because the Sixth Circuit and the District Court did not apply Michigan statute governing fraud to Petitioner's 42 U.S.C. § 1983 cause of action. Petitioner filed a complaint in the United States District Court for the Eastern District of Michigan on June 6, 2005 with a jury demand alleging intrinsic fraud, financial conflict of interest and non-disclosure. Petitioner discovered shortly after being denied by the Michigan Supreme Court that the Respondents involved with the termination of her parental rights have a scheme to generate federal funding by creating cases and situations that do not exist to generate this money. Petitioner discovered that there is a federal grant for child abuse/neglect involving children with unexplained or suspicious "rib fractures" and "skull fractures" which was the foundation that led to the unlawful removal of Petitioner's children and as a result Petitioner's parental rights to her three minor children were severed.

In response to Petitioner's complaint that the Respondents scheme to use her children as grant money cash cows to defraud the government of grant money resulted in the unlawful termination of Petitioner's parental rights to her three minor children by persons acting under color of law, resulting in an injury to Petitioner, Respondent Thomas Slovis filed an answer to the complaint with affirmative defenses (R. 6), Respondents AnnaMaria Church and Vincent Palusci filed a Memorandum Brief in Support of Motion to Enlarge Time for Filing Responsive Pleadings to respond to the complaint (R. 11) and the Attorney General filed a motion to dismiss Petitioners complaint pursuant to Fed. R. Civ. P. 12(b)(6) (R. 8). The Attorney General argued in his motion to dismiss that

Petitioner 42 U.S.C. § 1983 claim was time barred because Petitioner failed to comply with the three year time limitations for personal injuries set forth in Mich. Comp. Laws Ann. § 600.5805(1) (R. 8 p. 2). App. ___. The District Court agreed that Petitioner claims failed to satisfy the three year time limitations for personal injuries set forth in Mich. Comp. Laws Ann. § 600.5805(10) (R. 21 p. 3). App. ___. The Sixth Circuit affirmed. App. ___.

The Attorney General on behalf of the state defendants admitted that Appellant did state a claim for relief under 42 U.S.C. § 1983, and that Appellant's claims must comport with the three year statute of limitations claim in Mich. Comp. Laws Ann. § 600.5805(1) (R. 8, p. 2). App. ___.

Respondents AnnaMaria Church, Thomas Slovis and Vincent Palusci agreed that Petitioner 42 U.S.C. § 1983 claim fell within Michigan statute of limitations pursuant to Mich. Comp. Laws Ann. § 600.5805(10) see appellee brief for Respondent AnnaMaria church for the Sixth Circuit (App. ___. p. 3), see appellee brief for Respondent Thomas Slovis for the Sixth Circuit (App. ___. p. 8) and see appellee brief for Vincent Palusci for the Sixth Circuit (App. ___. p. 6).

Petitioner agrees that the three-year statute of limitations under Mich. Comp. Laws Ann. § 600.5805(1) applies to her 42 U.S.C. § 1983 claim.

It is undisputed that the limitations period applicable to Petitioner case is three years as established in Michigan's statute governing personal injury action. Mich. Comp. Laws Ann. § 600.5805(10) which states:

> The period of limitations is three years after the time of death or injury for all other actions to recover damages for the death of a person, or for injury to a person or property.

The statute of limitations on Petitioners fraud claim, pursuant to Mich. Comp. Laws Ann. § 600.5855 Fraudulent concealment of claim or identity of person liable; discovery which states:

> If a person who is or may be liable for any claim fraudulently conceals the existence of the claim or the identity of any person who is liable for the claim from the knowledge of the person entitled to sue on the claim, the action may be commenced at any time within 2 years after the person who is entitled to bring the action discovers, or should have discovered, the existence of the claim or the identity of the person who is liable for the claim.

The Sixth Circuit did not apply the appropriate state statute of limitations and the coordinate tolling rules in Petitioners 42 U.S.C. § 1983 cause of action. The Sixth Circuit ruling conflicts with *Board of Regents, University of New York v. Tomanio,* 446 U.S. 478 (1980).

The Sixth Circuit refused to apply Michigan's statute governing personal injury action. Mich. Comp. Laws Ann. § 600.5805(10) and Mich. Comp. Laws Ann. § 600.5855 to Petitioners 42 U.S.C. § 1983 cause of action. The statute of limitations period in a 42 U.S.C. § 1983 cause of action in Michigan is three years, *Wolfe v. Perry,* 412 F.3d 707, 713-14 (6th Cir. 2005), and begins to run when the plaintiff knows or has reason to know that the act providing the basis of her injury has occurred. *See Friedman v.*

Estate of Presser, 929 F.2d 1151 (6th Cir. 1991). Supreme Court Rule 10 identifies considerations used by the Court in deciding whether to exercise its discretion to grant a Petition for Writ of Certiorari. On consideration is whether a United States court of appeals has decided an important federal question in a way that conflicts with relevant decisions of this Court.

Petitioner requests that the Court take Judicial Notice of Mich. Comp. Laws Ann. § 600.5805 (App. 3), Mich. Comp. Laws Ann. § 600.5855 (App. 3), The Request and Order Terminating Court Jurisdiction filed in the Third Circuit Wayne County Court indicating the final order of adoption of Petitioners children on February 4, 2003 by Hon. Sheila Gibson Manning which clearly indicate that an issue arose as to the date of the last complained act or occurring as a violation of Petitioners rights under 42 U.S.C. § 1983. (App. 1). The final order of adoption is a part of the record as Exhibit 5 in Petitioners Motion for Reconsideration in the District Court (R. 24, Ex. 5) and Petitioners Reply Brief for the State defendants in the Sixth Circuit as Exhibit 1 App. ___. Petitioner respectfully brings to the attention of this Honorable Court a published Opinion from the Michigan Supreme court *In re JK, Minor Family Independence Agency v. Melissa Kurcharski,* No. 121410. Petitioner attached the aforementioned Opinion at Exhibit 1 to her timely filed Petition for Rehearing in the Sixth Circuit. App. ___. Petitioner argued that it was not unreasonable for her to have appealed to the Michigan Supreme Court. In the aforementioned case, *Melissa Kurcharski* appealed to the

Michigan Supreme Court for the return of her child challenging the unlawful termination of her parental rights to her child and the unlawful adoption of her child while her State court action was pending. The Michigan Supreme Court reversed the decision of the Michigan Court of Appeals and the family court and ordered the child returned to his mother namely, because *Melissa Kurcharski* had complied with the parent/agency agreement contract and the adoption was unlawful. Petitioner raised and argued the parent/agency contract in the courts below, which is an important issue because the Petitioner was misled to comply with the contract for reunification with her children. The Attorney General misled Petitioner that her children were one court hearing away, then petitioned the family court for permanent custody and took Petitioner's children. Thus, Petitioner is within the law to ask this Honorable Court to consider the parent/agency agreement contract. The Respondents have misled this Court in their Opposition Brief that Petitioner slept on her rights. The Respondents cannot reasonably argue that Petitioner failed to protect her constitutional rights because she diligently pursued and timely appealed in state court. Petitioner is deprived of life and liberty without due process of law. The relationship between the Petitioner and her children is Constitutionally [**14] protected. *Quilloin v. Walcott, 434* U.S. 246, 255, 98 S. Ct. 549, 54 L. Ed. 2d 511, *reh'J denied,* 435 U.S. 918, 98 S. Ct. 1477, 55 L. Ed. 2d 511 (1978); *Stanley v. Illinois,* 405 U.S. 645, 658, 92 S. Ct. 1208, 31

L. Ed. 2d 551 (1972); *Meyer v. Nebraska,* 262 U.S. 390, 339-401, 43 S. Ct. 625, 67 L. Ed. 1042 (1923).

CONCLUSION

The Petition for a Writ of Certiorari should be granted because Petitioner's 42 U.S.C. § 1983 claim filed on June 6, 2005 was not time barred by the statute of limitations as set forth in Mich. Comp. Laws Ann. § 600.5805(1).

Respectfully submitted,

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STATE OF MICHIGAN THIRD JUDICIAL CIRCUIT COURT FAMILY DIVISION — JUVENILE SECTION	REQUEST AND ORDER TERMINATING COURT JURISDICTION	File Number: 98-372,109

(Filed Feb. 4, 2003)

1. In the matter of **Darren Darnell Austin (DOB: 08/18/99), adoptee Darius Shakur Banks (DOB: 01/11/94), adoptee Danielle Brianna Austin (DOB: 01/12198), adoptee**

2. **I, Denise Fitzhugh, Court Executive I** request that the jurisdiction of this court be terminated, O **with** ● **without** a hearing, for the following the reason:

[ ] a. Terms of probation have been completed.

[ ] b. Minor has attained maximum jurisdictional age.

c. Minor has been returned to the full care, custody, and control of parent(s), and further court supervision is not necessary.

[x] d. Other: Final Order of Adoption was entered on February 04, 2003 by the Honorable **Sheila Gibson Manning,** Presiding judge of the Third Judicial Circuit Court-Family Division-Juvenile Section

DISTRIBUTION:

Orchards Children's Services
30215 Southfield Road-Suite 100
Southfield, Michigan 4807 5

LADA-Civil Division
Suite 2400
645 Griswold
Detroit, Michigan 48226

Approved By:	**Denise F i t z h u g h**
Title:	**Court Executive I**
Date:	**02/04/2003**
Address:	**1025 E. Forest Ave.**
City, State, Zip:	**Detroit, MI 48207**
Telephone #:	**313-833-0354**

3. **IT IS ORDERED that the jurisdiction of this court is terminated in this case except that the court reserves the right to enforce payments of support and attorney fees that have accrued up to and including the date of this order. (The court may insert provisions for reimbursement.)**

Feb. 04 2003 /s/ Sheila G. Manning

Date Judge Bar No.

REVISED JUDICATURE ACT OF 1961
(EXCERPT) Act 236 of 1961

600.5855 Fraudulent concealment of claim or identity of person liable; discovery.

If a person who is or may be liable for any claim fraudulently conceals the existence of the claim or the identity of any person who is liable for the claim from the knowledge of the person entitled to sue on the claim, the action may be commenced at any time within 2 years after the person who is entitled to bring the action discovers, or should have discovered, the existence of the claim or the identity of the person who is liable for the claim, although the action would otherwise be barred by the period of limitations.

600.5805 Injuries to persons or property; limitations; "dating relationship" defined.

(1) A person shall not bring or maintain an action to recover damages for injuries to persons or property unless, after the claim first accrued to the plaintiff or to someone through whom the plaintiff claims, the action is commenced within the periods of time prescribed by this section.

(2) The period of limitations is 2 years for an action charging assault, battery, or false imprisonment.

(3) The period of limitations is 5 years for an action charging assault or battery brought by a person who has been assaulted or battered by his or her spouse or former spouse, an individual with whom he or she has had a child in common, or a person with whom he or she resides or formerly resided. This limitation applies to causes of

action arising on or after February 17, 2000 and to causes of action in which the period of limitations described in subsection (2) has not already expired as of February 17, 2000.

(4) The period of limitations is 5 years for an action charging assault and battery brought by a person who has been assaulted or battered by an individual with whom he or she has or has had a dating relationship. This limitation applies to causes of action arising on or after January 1, 2003 and to causes of action in which the period of limitations described in subsection (2) has not already expired as of January 1, 2003.

(5) The period of limitations is 2 years for an action charging malicious prosecution.

(6) Except as otherwise provided in this chapter, the period of limitations is 2 years for an action charging malpractice.

(7) The period of limitations is 2 years for an action against a sheriff charging misconduct or neglect of office by the sheriff or the sheriff's deputies.

(8) The period of limitations is 2-years after the expiration of the year for which a constable was elected for actions based on the constable's negligence or misconduct as constable.

(9) The period of limitations is 1 year for an action charging libel or slander.

(10) The period of limitations is 3 years after the time of the death or injury for all other actions to recover damages for the death of a person, or for injury to a person or property.

(11) The period of limitations is 5 years for an action to recover damages for injury to a person or property brought by a person who has been assaulted or battered by his or her spouse or former spouse, an individual with whom he or she has had a child in common, or a person with whom he or she resides or formerly resided. This limitation applies to causes of action arising on or after February 17, 2000 and to causes of action in which the period of limitations described in subsection (10) has not already expired as of February 17, 2000.

(12) The period of limitations is 5 years for an action to recover damages for injury to a person or property brought by a person who has been assaulted or battered by an individual with whom he or she has or has had a dating relationship. This limitation applies to causes of action arising on or after January 1, 2003 and to causes of action in which the period of limitations described in subsection (2) has not already expired as of January I, 2003.

(13) The period of limitations is 3 years for a products liability action. However, in the case of a product that has been in use for not less than 10 years, the plaintiff, in proving a prima facie case, shall be required to do so without benefit of any presumption.

(14) The period of limitations for an action against a state licensed architect, professional engineer, land surveyor, or contractor based on an improvement to real property shall be as provided in section 5839.

(15) As used in this section, "dating relationship" means frequent, intimate associations primarily characterized by the expectation of affectional involvement. Dating relationship does not include a casual relationship or an

ordinary fraternization between 2 individuals in a business or social context.